



CALIFORNIA DEPARTMENT OF FISH AND GAME

SOUTH COAST REGION
4949 VIEWRIDGE AVENUE
SAN DIEGO, CALIFORNIA 92123

MEMORANDUM OF UNDERSTANDING

between

**CALIFORNIA DEPARTMENT OF TRANSPORTATION
DISTRICT 12, ORANGE COUNTY**

and

**CALIFORNIA DEPARTMENT OF FISH AND GAME
SOUTH COAST, REGION 5**

regarding

**ROUTINE MAINTENANCE ACTIVITIES IN IMPROVED AND UNIMPROVED
CHANNELS
NOTIFICATION #5-362-98**

This Memorandum of Understanding (MOU) by and between the California Department of Fish and Game, South Coast, Region 5, hereinafter called the "Department," and the California Department of Transportation, District 12, hereinafter called "Caltrans", is for the purpose of delineating and defining routine maintenance activities in improved and unimproved channels and shall not require further notice and agreement in compliance with Section 1601 of the Fish and Game Code, except as otherwise noted in this MOU.

WHEREAS, Section 1601 of the Fish and Game Code allows the Department to propose reasonable modifications to certain Caltrans projects as would allow for the protection and continuance of existing fish and wildlife resources that may be substantially adversely affected by that project; and

WHEREAS, with regard to any project that involves routine maintenance and operation of roads, bridges, drainage or flood control, notice to, and agreement with, the Department is not required subsequent to the initial notification and agreement, unless the work as described in the agreement is substantially changed or conditions affecting fish and wildlife resources change, and the resources are adversely affected by the activity conducted under the agreement; and

WHEREAS, it is essential that Caltrans perform routine maintenance activities within improved and unimproved channels to maintain the hydrological capacity of the channel(s), to protect the investment of the State of California, to prevent loss of life and property; and

WHEREAS, consistent with the policies of California Department of Fish and Game Code Section 1600 *et seq.*, the protection and conservation of the fish and wildlife resources of California are of utmost public interest, and fish and wildlife conservation is a proper responsibility of the State; and

WHEREAS, in order to avoid future conflicts, it is mutually beneficial to delineate and define routine maintenance, to establish procedures to expedite maintenance activities, and to provide for the protection and continuance of existing fish or wildlife resources during such maintenance activities; and

WHEREAS, nothing in this MOU shall constitute a waiver of any future or current Department claims to the use and maintenance of natural conditions under the public trust doctrine; and

WHEREAS, nothing in this MOU shall constitute a waiver of Caltrans' claimed rights to maintain and operate the channel(s) solely from the irrigation and/or flood control standpoint without a 1601 agreement; and

WHEREAS, this MOU is not intended to affect Caltrans' rights under Fish and Game Section 1601(f) to undertake emergency work necessary to protect life and property.

NOW THEREFORE, the Department and Caltrans agree as follows:

I. PURPOSE

The purpose of this MOU is to protect fish and wildlife resources pursuant to California Department of Fish and Game Code (Code) 1600 *et seq.* while allowing Caltrans, or their authorized contractor, to perform routine maintenance activities in channels within the right-of-way (ROW), or drainage easement, of a state route, or interstate highway in order to maintain their function and capacity to prevent flooding that could damage the roadway or adjacent properties, or cause a safety hazard. Those portions of roadway drainage systems that capture water from the pavement through an inlet structure, such as those listed on the Highway System Inventory (July 1995) as drop or curb inlets (C610), overside drains (C611), horizontal drains (C720) and slotted drains or pavement structural drains (C721), and convey it via an enclosed pipe to an outlet are not regulated under this section of the Code and therefore are not covered by this MOU. Culverts, which are also listed in the Inventory as C611, are subject to Code Section 1601 if they are connected to an open channel at both ends. Channels that are open on the top, beginning at the outlet of the enclosed systems described above, have the potential to support a fish or wildlife resource and are also subject to Code Section 1601. Channels that fit these descriptions are addressed in this MOU. This includes channels and ditches, as defined in the Inventory, that are within the ROW or drainage easements, and also rivers, streams, or other watercourses that are crossed by roadways via bridges or culverts. Routine maintenance activities that are typically performed in these channels include the removal of sand, silt, sediment, debris, rubbish, woody and herbaceous vegetation and other obstructions to flow, the control of weeds, grasses, and emergent vegetation, and the repair and/or replacement in kind, cleaning and clearing, all as necessary to maintain the structural integrity and capacity of these facilities for drainage, flood control, and conservation purposes. This MOU is not intended to cover: 1) any activities, including routine maintenance, in any riparian habitat that supports sensitive or listed species, 2) activities that remove more than minimal native riparian vegetation or would typically require compensation/mitigation under Section 1600 of the Code, the California Environmental Quality Act (CEQA), or any

other environmental laws or regulations, or 3) activities that would involve more than routine maintenance. This MOU does not relieve Caltrans of any responsibility for compliance with this or any other section of the Code. Notification pursuant to Section 1600 *et seq.* will still be required for all activities that are not specifically authorized by this MOU.

This MOU is only applicable to activities that are exempt from CEQA pursuant to either a Statutory or Categorical Exemption.

II. DEFINITIONS

The following definitions shall govern this MOU:

Improved channel is defined as the channel of a stream or river, watercourse or ditch, in which significant man-made alterations have occurred to improve the passage of irrigation and/or flood flows, including straightening the channel or containing the flows within constructed banks that are concrete-lined or riprapped, or earth channels with modified banks.

Unimproved channel is defined as the channel of a stream or river, watercourse or ditch, in which significant manmade alterations and/or improvements have not occurred.

Sparse native vegetation is defined relative to the percent cover value of the majority of the vegetation within the channel at the proposed work site. In order to be considered sparse, no more than 20% of the total vegetation cover within the channel can be native. For example: If the total vegetation cover (both native and non-native) within the channel at the proposed work site is 60% (40% is unvegetated) then native vegetation could occupy no more than 12% of the area in order to qualify as sparse.

Category 1A includes improved channels with little or no vegetation that are concrete lined and located in urban areas. Category 1 channels include those areas of rock placed as energy dissipaters. If vegetation is present, it cannot exceed the following:

- herbaceous ruderal and non-native species including, but not limited to, castor bean, Arundo/giant reed, cocklebur and grasses
- native emergent aquatic vegetation such as cattail up to 400 sq.ft. in area
- a single tree (native or non-native) up to 4" dbh (diameter breast height)

Channels in this category shall not include established native vegetation, such as mulefat (*Baccharis salicifolia*) and willows (*Salix* spp.), nor contain riparian habitat potentially, or known to be historically or presently, occupied by sensitive wildlife species. This category is further limited as follows:

- all channels in this category shall be in areas that have been developed or are in active agriculture
- channels otherwise fitting this description that are adjacent to native habitats or non-native grasslands that could support sensitive species are excluded from this category
- channels otherwise fitting this description that function as wildlife corridors are excluded from this category

- channels otherwise fitting this description that convey flow that is, at least in part, from a natural watercourse and therefore may support fish or wildlife resources are excluded from this category. This exclusion also applies to culverts that convey water that is, at least in part, from a natural watercourse that supports a fish or wildlife resource.

Category 1B includes improved channels that are in all respects as defined under Category 1A, except they are unlined or lined with riprap.

Category 2 includes improved and unimproved channels that are vegetated with any of the following:

- herbaceous and woody non-natives including, but not limited to, castor bean, Arundo/giant reed, cocklebur, grasses, acacia, eucalyptus and palms
- herbaceous and woody native riparian vegetation

This category also includes improved channels that would otherwise fit in category 1, but are adjacent to habitats that may support sensitive species (all undeveloped/rural areas), channels that function as wildlife corridors, and culverts that convey, at least in part, flow from a natural watercourse that may support a fish or wildlife resource. Areas that support sensitive species are excluded from this category.

Category 3 includes improved and unimproved channels that support native riparian vegetation that is habitat for species that are sensitive (those included in the California Natural Diversity Database), or listed as threatened or endangered pursuant to the California Endangered Species Act or the Federal Endangered Species Act. Routine maintenance activities in this category shall be subject to separate notification and agreement pursuant to Fish and Game Code 1600 *et seq.*

Prior approval: Caltrans Maintenance will submit a written request (Appendix A) to the District Biologist, Environmental Planning Branch, containing the location and dimension of the channel, volume of soil and vegetation to be removed, and site photographs. The District Biologist will evaluate the site for potential impacts to fish and wildlife resources, particularly those considered sensitive, and shall determine if the activity is in Category 2 or 3. If the activity is in Category 2, additional limitations or conditions on the proposed work will be imposed by the District Biologist if needed to protect those resources. For each request, the District Biologist will add (or attach) to the request form: a brief description of the biological resources present at the site prior to the maintenance activity, the rationale for the determination of the category, and any additional limitations or conditions imposed on the work. If the activity is in Category 3, the activity is not authorized by this MOU and notification pursuant to Section 1601 of the Fish and Game Code will be required.

Authorized activities in Category 1A and 1B do not require prior approval from the District Biologist.

Authorized activities in Category 2 require prior approval from the District Biologist.

III. AUTHORIZED ACTIVITIES

The maintenance activities identified below, when performed on Category 1 and 2 channels in accordance with the definitions and procedures described in this MOU, shall not require further notice to, or agreement with, the Department.

1. Channels may be cleared of sediment, all human generated debris such as lawn and farm cuttings, garbage and trash, flood-deposited vegetation, fallen trees, dead trees which are in danger of falling into the channel, branches, and other debris, which directly interferes with the proper function and operation of the channel and associated devices such as sediment traps, energy dissipaters, culverts, weirs, and stream flow control and measuring stations, or that which must be removed to repair those devices or replace them, in kind, in their existing locations.

2. Where vegetated watercourses cause a line-of-sight problem for signage or driveways/roadways entering state routes and interstate highways, that vegetation may be pruned/trimmed to the point where the obstructed view has been relieved.

3. Vegetation that would cause an obstruction to flow may be removed as follows:

Category 1A channels may be cleared of all vegetation.

Category 1B channels may be cleared of vegetation only as required to maintain the function of the channel as designed and only if the clearing will not result in erosion that could adversely affect fish or wildlife resources downstream. Mowing and/or trimming of vegetation in this channel type shall be done whenever possible in order to maintain soil stability.

Category 2 channels may be cleared of any non-native vegetation. Native vegetation may be removed only if it is sparse, as previously defined, the removal is necessary to perform activities as described in #1, and the maintenance activity is necessary to prevent flooding. Mowing and/or trimming of vegetation in unlined channels in this category shall be done whenever possible, instead of clearing, in order to maintain soil stability. Removal of native vegetation, by any means, that does not fit the definition of sparse is not authorized by this MOU.

Except as otherwise permitted in this agreement, the removal of soil, vegetation, and vegetative debris from the streambed or stream banks is prohibited.

IV. TIME AND MANNER OF MAINTENANCE OPERATIONS

Maintenance activities shall be performed at a time and in a manner to minimize adverse impacts and provide for the protection and continuance of existing fish and wildlife resources. The following measures to protect fish and wildlife resources are mandatory conditions of this MOU. Additional measures or project limitations may be added at some Category 2 channels by the District Biologist and must be implemented as proposed for those activities to be authorized by this MOU.

1. Caltrans Maintenance will submit a log of all maintenance activities covered by this MOU, with pre-project photographs, the location of the activity, and a description of the work, to the District Biologist on a monthly basis. The District Biologist shall review

these logs to ensure that all activities were conducted in accordance with the terms of the MOU. The log shall be retained by Caltrans for the duration of this MOU in a location that is accessible and known to the Department, and shall be available for review at any time during normal business hours.

2. All work within channels that have only intermittent flow shall be performed while the channel is dry. Work within channels with perennial flow shall be performed during times when there is relatively low flow.
3. Caltrans shall not remove vegetation from March 1 to August 15 to avoid impacts to nesting birds. Vegetation may be removed during this time if a qualified biologist conducts a survey for nesting birds within one week of the vegetation removal, and ensures no nesting birds could be impacted by the activity. If nesting birds are present, no work shall occur until the young have fledged and will no longer be impacted by the project.
4. Any exotic plant species removed shall be disposed of at a site approved by the Caltrans biologist. The Department recommends the removal of exotic plant species from as many channels and streams as possible as long as this can be accomplished in a manner that does not harm existing fish and wildlife resources.
5. Caltrans shall not disturb vegetation on the stream banks during maintenance operations, except the absolute minimum needed to allow access of equipment and personnel to the area. These impacts shall be reduced to the greatest extent possible, and no native trees shall be impacted by this activity.
6. Material removed from the channels shall not exceed the limits approved by the Department.
7. Material removed from the channels shall not be placed where it can be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.
8. Water containing mud, silt or other pollutants from routine maintenance activities conducted by Caltrans shall not be allowed to enter a lake or flowing stream, or be placed in locations that may be subjected to high stream flows or where it may be washed by rainfall or runoff into waters of the State. Measures to minimize turbidity/siltation shall be taken into account during project planning and implementation.
9. No debris, soil, sand, bark, slash, sawdust, rubbish, cement or concrete washings thereof, asphalt, oil or petroleum products, or any other material that may be harmful to fish or wildlife, that results from any maintenance or associated activity of whatever nature that is conducted by Caltrans or their contractor(s), shall be allowed to enter or be placed where it may be washed by rainfall or runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.
10. Staging/storage areas for equipment and materials shall be located outside of the stream/lake.

11. Caltrans shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of Caltrans to ensure compliance.
12. Any equipment or vehicles driven and/or operated within or adjacent to the channels, streams or lakes shall be checked and maintained daily to prevent leaks of materials that if introduced into water could be harmful to aquatic life.
13. No equipment maintenance shall be performed within or near any stream, channel or lake margin where petroleum products or other pollutants from the equipment may enter these areas under any flow.
14. Equipment shall not be operated in ponded or flowing areas. When work in a flowing stream is unavoidable, measures to minimize turbidity/siltation shall be implemented.
15. If a stream's low flow channel, bed or banks/lake bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.
16. Caltrans shall provide a copy of this MOU to all contractors, subcontractors, and Caltrans' project supervisors. Copies of the MOU shall be readily available at work sites at all times during periods of active work and must be presented to any Department personnel, or personnel from another agency upon demand.
17. The Department reserves the right to enter the job site at any time to ensure compliance with the terms/conditions of this MOU.
18. Nothing in this MOU authorizes Caltrans to trespass on any land or property, nor does it relieve Caltrans of responsibility for compliance with applicable federal, state, or local laws or ordinances. This MOU does not constitute or imply the approval or endorsement of a project, or of specific project features by the Department of Fish and Game beyond the Department's limited scope of responsibility, established by Code Sections 1600 *et seq.* The MOU does not, therefore, assure concurrence by the Department with the issuance of permits from this or any other agency. This includes, but is not limited to, CEQA and NEPA project review. Any fish and wildlife protection or mitigation features that are adopted by a CEQA or NEPA lead agency, or made the conditions for the issuance of a permit for this project, become part of the project description for the purpose of this MOU.
19. It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Operator, and is not required by this agreement. **It is further agreed all liability and/or incurred cost related to or arising out of the Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the Operator.** The Operator agrees to hold harmless the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or any other damages.

20. Caltrans shall request a renewal of this MOU prior to its termination date. If Caltrans fails to request renewal prior to the MOU's termination, then Caltrans shall submit a new notification with fees and required information to the Department. This MOU shall be reviewed as necessary prior to any renewal to ensure environmental conditions have not changed, that new provisions are not required to protect fish and wildlife, or to resolve conflict between the parties. Any activities conducted under an expired MOU are a violation of Fish and Game Code.

V. REPORTING REQUIREMENTS

Caltrans shall provide a written report, including a brief description of the activities conducted and a complete list of each location/facility where routine maintenance was performed during the previous year, (January 1 through December 31), to the Department on or before February 28 of each year. Caltrans shall include the associated fee total for all activities completed under Category 2. The report shall reference this MOU by number and shall be sent to the Department at 4949 Viewridge Avenue, San Diego, CA 92123.

VI. FEES

California Code of Regulations, Title 14, Section 699.5, establishes fees for projects subject to Fish and Game Code Section 1601. The category for 1601 ROUTINE MAINTENANCE ACTIVITIES by public agencies specifies an initial non-refundable application fee, with additional charges for each project, where a "project" is defined as work that falls within the agreed scope of maintenance work. For the purposes of this MOU, a project is defined as each activity that is completed under Category 2; fees shall not apply to activities in Category 1A or 1B. Fees applicable to activities undertaken pursuant to this MOU will be those currently in effect at the time of the activity.

VII. AMENDMENT AND TERMINATION

This MOU cannot be amended or modified in any way except by a written agreement duly executed by the Department and Caltrans. Mutually approved amendments become part of this MOU and are subject to all previously negotiated provisions.

This MOU may be terminated by either party upon 30 days written notification to the other party. Upon termination, the activities of the parties shall be governed by the applicable provisions of California Fish and Game Code Section 1601.

VIII. ENTIRE AGREEMENT

This MOU constitutes the entire agreement and understanding between the Department and Caltrans for routine maintenance activities, and supersedes all prior

and contemporaneous routine maintenance activity agreements, representations, or understandings, if any, whether oral or written.

IX. OTHER ENVIRONMENTAL LAWS, STATUTES, AND REGULATIONS

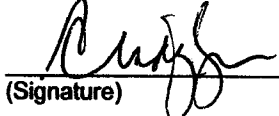
This MOU does not constitute any form of authorization, permit, biological opinion, or compliance with the requirements and provisions of any other statute, regulation, requirement, or ordinance respecting the protection or conservation of fish and wildlife resources. Those statutes include, but are not limited to, the California Environmental Quality Act, the California Endangered Species Act and the Federal Endangered Species Act.

X. ENTIRE AGREEMENT

This MOU shall become effective beginning on the **date of the Department's signature and receipt of the application fee**, and shall terminate 2 years after that date.

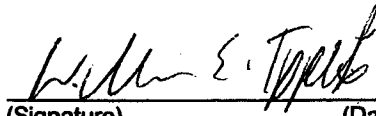
CONCURRENCE:

CALIFORNIA DEPT. OF TRANSPORTATION
District 12

 7-14-03
(Signature) (Date)

Cindy Quon, District Director

CALIFORNIA DEPT. OF FISH AND GAME
Region 5

 8/21/03
(Signature) (Date)

C.F. Raysbrook, Regional Manager

APPENDIX A:

MAINTENANCE REQUEST FORM TO ENVIRONMENTAL PLANNING

Date of Request: _____

Sent By (Supervisor/Superintendent) : _____ / _____

Project Description Information: (please use one form for each site)

Route: _____ **Post Mile:** _____ **Direction of Travel:** _____

Type of facility/structure: _____

Specific Post Miles of Drain/Ditch/Channel: _____

Length: _____ **Width:** _____ **Height:** _____

Amount (cy) of soil and/or vegetation requested for removal:

Type of Equipment necessary & approximate size of staging area to complete activity (if applicable):

Additional Project Comments: _____

Attach Photos: (please label each photo w/ site information & date picture taken)